

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

CRL.A. 1234/2019

Reserved on : 23.07.2020

Date of Decision: 17.09.2020

IN THE MATTER OF:

ANIL @ SUNIL @ SENIOR

..... Appellant

Through: Mr. Kanhaiya Singhal, Advocate with
Mr. Chetan Bhardwaj, Mr. Prasanna & Ms.
Pratiksha Tripathi, Advocates

Versus

STATE

..... Respondent

Through: Ms. Radhika Kolluru, APP for State

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. The present appeal is preferred under Section 374(2) read with Section 482 Cr.P.C. on behalf of the appellant *Anil @ Sunil @ Senior* challenging the judgment on conviction dated 29.08.2019 and order on sentence dated 31.08.2019 passed by the Addl. Sessions Judge, North District, Rohini Courts, New Delhi in SC No. 58293/2016 arising out of FIR No. 226/2008 registered under Sections 392/397/411/34 IPC at Police Station Rohini, Delhi whereby the appellant was convicted for the offence punishable under Sections 392/34 IPC read with Section 397 IPC. Further, vide order on sentence dated 31.08.2019, the appellant was directed to undergo Rigorous Imprisonment for 7 years along with

payment of fine of Rs.20,000/- in default whereof, to undergo Simple Imprisonment for 5 months for the offence punishable under Sections 392/34 IPC read with Section 397 IPC.

2. The brief facts as noted by the Trial Court are reproduced hereunder: -

“1. Brief facts as stated in the charge sheet are that on 15.04.2008 one Rakesh Singhal made a complaint to the police as under:

“That he was residing at B-13/53, Sector 8 Ground Floor, Rohini and running a jewellery shop in the name of "Rohini Jewellers" at D-13/20, Sector 8, Rohini, Delhi. On 15.04.2008, at about 8:30 pm, he along with his cousin brother Ankit and servant Mahesh were present at the showroom then three boys aged around 25-30 years height 5'10" having strong, thin build and fair colour came there and asked them to keep mum.

They all took out their pistols and other person strong built clean shave put off his red colour bag on counter and third one strong built, brown hair stood on the gate. The person, who was carrying red colour bag picked out all the diamond and golden jewellery items and the first one asked him to hand over the cash, on which he took out Rs. 40,000/- from the cash box (galla) and handed over to him in fear on the pistol point.

Thereafter, all those three boys ran away on two wheeler, parked on the other side of the road and fired two shots in the air to show fear. He informed police on 100 number and stated that he could identify all the accused persons, if shown to him.”

2. On the said statement, FIR u/S. 392/34 IPC was registered at PS Rohini and investigations were taken up by SI Jagdish Chander.

3. During investigations, SI Jagdish prepared the site plan, recorded the statement of witnesses and also prepared the

sketch of suspects. On 06.07.2008, on the basis of secret information three persons were apprehended from main road Shamshan Ghat, Sector-3, Rohini and a stolen Santro car no. DL-4CS-7118 (fake no. HR-13B-2285) in FIR No. 274/08, PS Saraswati Vihar and a stolen motorcycle no. DL-6SY- 0667 (fake no. HR-13B-2235) in FIR No. 75/08, PS Paschim Vihar were also recovered from their possession. Two .32 bore pistols along with two live cartridges each were also recovered from their possession.

4. The said accused persons namely Ashwani @ Sonu, Manesh @ Monu and Anil @ Sunil @ Senior disclosed about the commission of various heinous crimes in Delhi and NCR including the present case. Accordingly, the said case was transferred to SOS, Crime Branch for the purpose of further investigations by the order of senior officers. The further investigations were handed over to SI Virender Singh, SOS/Crime Branch.

The said accused persons were arrested in this case, interrogated and their disclosure statements were also recorded. The accused Ashwani @ Sonu disclosed his involvement in the present case and that he had sold the robbed jewellery to different jewellers in Tikri Kalan, Palam, Delhi, Bahadur Garh and Sonapat. Accused Manesh @ Monu and Anil @ Sunil @ Senior further disclosed that they could recover the case property from their house in the village Kidoli, Sonapat Haryana.

On the pointing out and at the instance of the accused persons 7 goldsmiths namely Bijender, Abhishek Verma, Ramesh Chand, Vinod Jain, Pardeep Kumar, Jitesh Verma and Devender Kumar were arrested on 16.07.2008 and their disclosure statements were recorded. The stolen jewellery / case property recovered from possession of the said goldsmiths was taken into possession by the IO and sealed.

The accused persons Ashwani @ Sonu, Manesh @ Monu and Anil @ Sunil @ Senior refused to participate in the TIP proceedings before the Ld. MM. The TIP of the case property

was got conducted, in which the witness had correctly identified the robbed jewellery articles.

After completion of investigations, charge sheet was filed against the accused persons Ashwani @ Sonu, Manesh @ Monu and Anil @ Sunil @ Senior u/S. 392/397/411/34 IPC and against accused persons Bijender, Abhishek Verma, Ramesh Chand, Vinod Jain, Pardeep Kumar, Jitesh Verma and Devender Kumar u/S. 411/34 IPC.

One of the accused Bhupender @ Bhuppi was avoiding his arrest and could not be arrested, regarding whom it was stated that supplementary charge sheet would be filed after his arrest.”

3. After completing the investigation, a charge-sheet was filed before the trial court and the charges were framed against all the accused persons.

4. Accused Ashwani @ Sonu expired during the pendency of trial. The other accused persons namely, Bhupender @ Bhuppi & Manesh @ Monu were given the benefit of doubt and were acquitted. The jewelers namely, Bijender, Ramesh Chand, Jitesh Verma, Devender Kumar and Vinod Jain to whom the robbed jewelry items were sold were also acquitted. The appellant was the only accused who was found guilty and was convicted.

Contentions

5. Learned counsel for the appellant, in his arguments raised following contentions.

- a) That since the TIP was refused by the appellant on the ground that he was already shown to the witnesses, the dock identification for the first time in the trial is meaningless;

- b) That the trial court disbelieved the prosecution case qua 'recovery of robbed jewelry articles' and the said finding has remained unchallenged;
- c) That the FSL report of the 'chance finger prints' lifted from the spot, is negative;
- d) And lastly, that although *SI Jagdish* (PW-9) testified that sketches of the accused persons were prepared at the behest of the prosecution witnesses, but no such sketches were produced in the trial.

6. In support of his first contention on the aspect of dock identification, learned counsel for the appellant also placed reliance on the decisions in Nazim Khan v. State reported as **(2014) SCC OnLine Del 2938**, State of M.P. v. Chamru @ Bhagwandas reported as **2001 SCC OnLine MP 221**, Vijayan v. State of Kerala reported as **(1999) 3 SCC 54** and Badshah v. State reported as **2017 SCC OnLine Del 8917**.

7. Per contra, learned APP for the State supported the impugned judgment. It was submitted that the appellant could not seek parity with the acquittal of the co-accused persons as the grounds of acquittal are different and distinguishable. It was submitted that the appellant was also involved in 6 other cases.

Material Witnesses

8. As per the prosecution case, the incident occurred on 15.04.2008 at about 8.30 pm when *Rakesh Singhal* (PW-1), *Ankit Singhal* (PW-2) and *Mahesh* (PW-7) were present inside their jewelry shop. While *Rakesh Singhal* (owner of the shop) & *Ankit Singhal* were the cousins, *Mahesh* was a servant/security guard in the shop.

9. *Rakesh Singhal* testified that he was running a jewelry shop in the name of *Rohini Jewelers* in partnership with his uncle *Vijay Singhal*. On the date of the incident while he was present in the shop along with his cousin *Ankit Singhal* (son of *Vijay Singhal*) & his servant *Mahesh*, three persons entered the shop. Those persons took out pistols and threatened him.

10. He identified the appellant as the person who was carrying a pistol and had taken position on his right side towards the servant. He identified *Ashwani @ Sonu* as the person who aimed the pistol at him and took out Rs.40,000/- from the cash box. He stated that the person who had taken out the jewelry from the almirah was not present in the Court on that day. He identified *Manesh @ Monu* as the person who had remained outside the shop. It was further stated that the jewelry was worth approximately Rs. 40 lakhs. While going out, those persons also fired twice in the air and ran away on two motorcycles.

11. He proved his statement recorded during investigation as Ex. PW1/A. The list of looted gold and diamond jewelry articles which was handed over during investigation was exhibited as Ex.PW1/B and Ex. PW1/C. The photocopies of the bills of looted jewelry articles were marked as Mark X-1 to X-14. He stated that the robbed jewelry articles were recovered later and were identified during the TIP proceedings. It has further come in his testimony that three months after the date of the incident, when he and his brother were opening the shop at about 9:00 am, the appellant along with other accused persons was brought by the police officials of the crime branch and he identified them.

12. Before this witness could be cross-examined, the fourth accused namely *Bhupender @ Bhuppi* was arrested (after he was declared P.O.)

and the witness was recalled for further examination-in-chief. This examination-in-chief took place nearly after one year of his earlier examination. The witness failed to identify *Bhupender @ Bhuppi* as the person who had taken out the jewelry articles from the almirah and put them in a bag. As the witness had resiled from his supplementary statement regarding role and identification of *Bhupender @ Bhuppi*, he was cross-examined by learned APP, however nothing material came out.

13. In cross-examination conducted on behalf of the accused persons, the witness denied the suggestion given on behalf of the appellant that the accused was shown to him by the police officials outside the lockup of Crime Branch. He stated that the appellant was brought to his shop by the police after three months from the date of the incident on which occasion, he had identified the appellant and other accused persons. He also clarified that at the time of the incident, none of the accused persons was wearing helmet. He denied the suggestion that the appellant had not committed any robbery of the jewelry articles and cash from his shop or that he identified the appellant at the instance of the I.O. and police officials of Crime Branch.

14. The witness was recalled for further cross examination under Section 311 Cr.P.C. on an application filed on behalf of the accused *Manesh @ Monu*. The witness stated that he had seen the accused *Manesh @ Monu* through the glass door as *Manesh @ Monu* had not entered the shop. He stated that while standing outside, *Manesh @ Monu* was not doing any unnatural activity. He admitted that due to many lights inside the shop, there was a dazzling effect outside the shop.

15. *Ankit Singhal's* testimony was cumulative to the testimony of his cousin *Rakesh Singhal*. He also identified the appellant as the person who had taken position before him and threatened him to keep mum at the point of gun. The witness also identified the other co-accused persons namely *Manesh @ Monu & Ashwani @ Sonu*. He stated that the fourth person who had put the jewelry items in the bag was not present in the court on that day. He further stated that on 16.07.2008, he identified the three accused persons when they were brought to his shop by the police.

16. Ankit Singhal was also recalled for further examination after the arrest of *Bhupender @ Bhuppi*. He also failed to identify *Bhupender @ Bhuppi* as the person who had taken out the jewelry articles from the almirah. In cross examination, he also clarified that at the time of incident, none of the accused persons were wearing any helmet or had their faces muffled. He denied the suggestions that the appellant was identified at the instance of the police officials of the Crime Branch.

17. *Mahesh*, the servant/security guard, was examined as PW-7. He stated that he was working as a watchman in the shop of the complainant. On the date of the incident at about 8:30 p.m., four persons aged about 25-30 years entered the shop. One of the persons threatened him that in case any alarm was raised, they would face the consequences. The aforesaid persons committed robbery at the point of pistols and thereafter ran away. The witness was not cross examined as he did not make any statement on the aspect of the identification or individual roles of the accused persons.

18. SI *Jagdish Chander* (PW-9) along with Constable *Narender Kumar* (PW-8) were the police officials who had reached the spot after receiving the call. They found empty jewelry boxes scattered in the shop.

SI *Jagdish Chander* recorded the statement (Ex.PW1/A) of the complainant- *Rakesh Singhal* and prepared the site plan. He also recorded the statement of other witnesses.

19. SI *Narender* (PW-13) deposed that on 06.07.2008, he received a secret information about gathering of some unsocial elements pursuant to which he alongwith H.C. *Mahabir* (PW-10) and other raiding team members reached the '*M2K Mall*' in Rohini. The appellant alongwith accused *Manesh @ Monu* came there in a Santro Car. After 15 minutes, accused *Ashwani @ Sonu* also reached there on a motorcycle and started talking to the appellant. All the accused persons were apprehended and on their search two pistols, one stolen car and a stolen motorcycle were recovered. FIR No. 400/2008 was registered in this regard. Thereafter, the accused persons confessed their involvement in the present case and were handed over to SI *Virender*. The witness also joined investigation at the time of pointing out the place of occurrence and recovery of robbed jewelry articles.

20. The investigation officer, SI *Virender* was examined as PW-14. He stated that all the three accused persons were arrested in the present case on 07.07.2008. On the same day, he recorded their disclosure statements and produced them before the concerned court in muffled face and 7 days judicial remand was given. He moved an application for judicial TIP of all the three accused persons. The judicial TIP was held on 09.07.2008 when the appellant alongwith other accused persons refused to participate in the judicial TIP on the ground that they were already shown to the witnesses outside the lockup of office of Crime Branch. On 14.07.2008, PC remand of all the accused were taken and on 16.07.2008, the accused persons pointed out the place of occurrence where they were

identified by the witnesses and thereafter, the accused were taken for further investigation to the Village *Tikri* and other places where they had sold the robbed jewelry articles. He denied the suggestion that photographs of the accused were taken before the TIP.

21. *Mr. Gaurav Jindal*, (PW-4), *Mr. Saurabh Gupta* (PW-6) and *Mr. Vikas Singhal* (PW-3) were examined to prove the invoices vide which they had sold golden and diamond jewelry articles to the complainant-*Rakesh Singhal*.

ANALYSIS

IDENTIFICATION OF THE APPELLANT

22. It is apparent that the trial court gave benefit of doubt to other accused persons as the prosecution failed to successfully prove the identity and the recovery against them.

23. The moot question to be decided is whether such benefit could be extended to the present appellant.

24. The time, date and place of the incident was consistently stated by all the three eye witnesses namely *Rakesh Singhal*, *Ankit Singhal* and *Mahesh*. The prosecution has placed sufficient evidence on record in terms of testimony of the eye witnesses and the official witness to successfully prove that the incident of robbery took place in the jewelry shop of *Rakesh Singhal* on 15.04.2008 at about 8-8.30 pm.

25. So far as identification and the role played by the present appellant in the aforementioned incident is concerned, the independent witness *Mahesh* did not utter a word. He was not put any question by the learned APP. That leaves only the testimony of the complainant and his cousin, *Ankit* to be evaluated and appreciated in light of the contentions raised by learned counsel for the appellant.

26. Learned counsel for the appellant contended that in view of the justified judicial TIP refusal, dock identification of the appellant for the first time in Court by *Rakesh Singhal* and *Ankit Singhal*, was fatal to the prosecution case. He further submitted that no reliance could be placed on their testimony as both of them turned hostile on the aspect of identification of the co-accused *Bhupender @ Bhuppi*. It was also submitted that the third witness *Mahesh* did not identify the appellant.

27. Before proceeding further, I deem it fit to encapsulate the law on identification of the accused in the Court in absence of TIP. In Raja v. State by the Inspector of Police reported as **2019 SCC OnLine SC 1591**, the Supreme Court has held that if there is material on record that sufficiently indicates that reasons for “*gaining an enduring impression of the identity on the mind and memory of the witnesses*” are available on record, then even non-holding of TIP would not be fatal. The Court went on to reject the contention that identification for the first time in Court ought to be discarded and rather believed the eye witnesses as they had suffered injuries in the transaction by observing that they had sufficient opportunity to observe the accused to have an enduring impression of the identity of the assailants.

28. In Raju Manjhi v. State of Bihar reported as **(2019) 12 SCC 784**, it was held as under:

“16. The identification parade belongs to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim, a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification

should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration (see Kanta Prashad v. Delhi Admn. [Kanta Prashad v. Delhi Admn., AIR 1958 SC 350 : 1958 Cri LJ 698] and Vaikuntam Chandrappa v. State of A.P. [Vaikuntam Chandrappa v. State of A.P., AIR 1960 SC 1340 : 1960 Cri LJ 1681]).”

29. In the present case, the appellant refused to participate in the judicial TIP proceedings on the ground that prior to TIP proceedings, he was already shown to the witnesses outside the office of Crime Branch at Ashram.

30. In this regard, I deem it apposite to recapitulate the testimonies of SI *Narender* (PW-13) and the I.O SI *Virender Singh* (PW-14). It has come in the testimony SI *Narender* that on the basis of a secret information, the appellant alongwith co-accused *Ashwani @ Sonu* and *Manesh @ Monu* were arrested on 06.07.2008. From their possession, two pistols, a stolen car and a motorcycle were recovered. FIR No. 400/2008 under Section 411 IPC and Section 25 of the Arms Act was registered against them. They confessed their involvement in the present case. IO, SI *Virender* deposed that in the present case, the accused persons were arrested on 07.07.2008 and on the same day, they were produced before the concerned court. A perusal of the remand order dated 07.07.2008 passed by concerned Court would show that the appellant with other accused were produced in muffled faces from the police custody and were remanded to judicial custody. While they were in judicial custody, the TIP proceedings were conducted on 09.07.2008 however, the appellant refused to participate for the abovementioned reasons.

31. It is pertinent to note that in the trial, the appellant never challenged his arrest made in the present case on 07.07.2008 either at the time of cross examination of any of the prosecution witnesses or at the time of recording of his statement under Section 313 Cr.P.C. The appellant did not put any question either to the eye witnesses or to SI *Narender* or to the IO, SI *Virender* that he was shown to the witnesses after his arrest on 06.07.2008 in FIR 400/2008 and before his production before the Court on 07.07.2008. Rather, it was suggested to the IO, SI *Virender* that his photograph was taken prior to moving an application for the judicial TIP and the same was shown to the complainant, which suggestion was denied. In contrast, it was suggested to *Rakesh Singhal* and *Ankit Singhal* that he was shown outside the office of Crime Branch on the basis of which they identified him in Court on 23.07.2010.

32. In a case where the accused himself refuses to participate in the judicial TIP proceedings, then the testimony of the eye witnesses can be relied upon. The Supreme Court in Munna v. State (N.C.T. of Delhi) reported as (2003) 10 SCC 599 held as under:

“10. In a case where an accused himself refuses to participate in a test identification parade, it is not open to him to contend that the statement of the eye-witnesses made for the first time in Court wherein they specifically point towards him as a person who had taken part in the commission of the crime, should not be relied upon. This plea is available provided the prosecution is itself responsible for not holding a test identification parade. However, in a case where the accused himself declines to participate in a test identification parade, the prosecution has no option but to proceed in a normal manner like all other cases and rely upon the testimony of the witnesses, which is recorded in Court during the course of the trial of the case.

xxx

xxx

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13. The case in hand stands on much better footing. Though the prosecution moved an application before the Metropolitan Magistrate to hold a test identification parade, but it was the appellant who declined to participate in the same. In his statement under Section 313 Cr.P.C. the appellant Munna stated that he was arrested from his house in Khurja on 14.2.1992. He was produced in the Court of Metropolitan Magistrate on 15.2.1992 by the investigating officer of the case. In the application it was stated that he had been kept 'baparda' and was produced in Court 'baparda' as a rest identification parade had to be held. Had he not been produced in 'baparda' condition, the learned Metropolitan Magistrate would have recorded the said fact. It is not a case where there was a long time gap between the time of the arrest and his production in Court, as according to the own statement of the appellant, he had been arrested only on the previous day. In his statement under Section 313 Cr.P.C., he did not state that he had been shown to the witnesses at the police station."

33. Now, coming to the aspect of in-Court identification of the appellant by the two eye witnesses. Here, I deem it profitable to refer to the factors which are to be considered for in-Court identification and were relied by the American Supreme Court in John R. MANSON, Commissioner of Correction of Connecticut v. Nowell A. BRATHWAITE reported as **432 U.S. 98 (1977)** where while referring to its earlier decision in William S. NEIL, Warden v. Archie Nathaniel BIGGERS, reported as **409 U.S. 188 (1972)**, it held that reliability is the linchpin in determining the admissibility of identification testimony and the factors to be considered are: the opportunity of the witness to view the criminal at the time of the crime; the witness' degree of attention; the accuracy of his prior description of the criminal; the level of certainty

demonstrated at the confrontation, and the time between the crime and the confrontation.

34. Reverting to the facts in the present case, in their testimony, both *Rakesh Singhal* and *Ankit Singhal* consistently testified that the appellant was carrying a pistol and took his position on the right side of *Rakesh Singhal* towards his servant *Mahesh*. Both the witnesses were positioned in the close proximity of the appellant and had sufficient opportunity to see him. *Rakesh Singhal* stated that the incident took about ten minutes. It is not a case where the witnesses had a fleeting glance of the accused on a dark night. The witnesses rather stated that at the time of the incident there was light in the shop (a jewelry shop) and because of the glare there was a dazzling effect outside the shop. In fact, the trial gave benefit of this dazzling effect while acquitting the co-accused *Manesh @ Monu*. It was also clarified by both the witnesses in their cross-examination that none of the accused persons were wearing helmets. Both the witnesses correctly identified the appellant in Court.

35. As noted above, the appellant was holding a pistol and had threatened them. He was positioned in the close proximity of the witnesses. Besides the witnesses, only the appellant along with two other accused were present in the shop. The witnesses had their complete attention fixed on the appellant.

36. It is noted that in his initial statement recorded on the day of incident itself, the complainant *Rakesh Singhal*, had given detailed description of the accused persons. He stated that three accused persons who entered his shop and committed robbery were boys in the age group of 25-30 years with height of about 5 feet 10 inches, having strong, thin built and fair color. The appellant did not challenge that he was not in the

age group or he did not possess the described physical characteristics. The age of the appellant matches with the age given in the initial complaint.

37. The trial court was the best person to judge the demeanor of the witnesses. It was observed that both the eye witnesses were categorical in their examination-in-chief while pointing out towards the appellant as the person who had used the pistol at the time of the incident.

38. The TIP proceedings were held within 2 days of the arrest of the appellant which was refused. The witnesses were examined after a gap of two years from the incident. A perusal of the daily order sheets of the trial court would reveal that the cognizance of the offence was taken vide order dated 04.09.2008. Thereafter, the case was adjourned for miscellaneous reasons including for supply of deficient copies to the accused; multiple bail applications; disposing applications filed by accused *Ashwani @ Sonu* (since expired) & the appellant seeking their transfer from the jails in Sonapat, Haryana in other cases and initiation of proceedings under Sections 82 & 83 Cr.P.C. against accused *Manesh @ Monu*. Vide order dated 02.06.2010, the trial court was constrained to note that a reasonable inference could be drawn from the conduct of the appellant that adjournment tactics were used to delay the examination of the material witnesses.

39. The reliance placed by learned Counsel for the appellant on the decision in Nazim Khan (Supra) is misplaced as in the captioned case, in the initial complaint, the accused were described as “boys” whereas as per the final report, the accused was stated to be aged about 49 years. It was held that the accused did not fit in the description of the assailant given by the complainant. In Chamru @ Bhagwandas (Supra), the

witnesses admitted in the cross examination that they were shown the photographs of the accused prior to the TIP proceedings, which however is not the case in the present matter. Again, the reliance placed on the decision in Vijayan (Supra), is misplaced. In the captioned case, the photograph of the accused was shown to the witness and also published in the newspaper prior to TIP. The accused was identified in TIP, but witness failed to identify him in Court. Similarly, the decision in Badshah (Supra) is not applicable as in the captioned case, the Court noted that it came in the testimony of the eye witness that all the accused had their cases muffled at the time of incident except one person whose handkerchief had fallen down but it was not stated in the initial statement that the person whose handkerchief had fallen down was the same person who had put the pistol on his neck. As such the none of the case laws cited by the learned counsel is applicable to the facts of the present case.

40. The contention raised by learned counsel for the appellant that the appellant's fingerprints do not match with the chance fingerprint lifted from the spot, has no merit. As per the evidence on record, the appellant's role was of standing near the witnesses and threatening them with a pistol while others committed robbery. Further, as per 'Crime Team Report' (Ex. Px), the chance prints were lifted from the almirah, plastic box, cash and spectacles. None of these articles were touched by the appellant. The role of the present appellant was only standing beside the witnesses and holding a pistol and threatening them.

41. The appellant cannot claim parity with the acquittal of the co-accused persons as they were granted benefit of doubt. The trial court acquitted the accused *Bhupender @ Bhuppi* by granting the benefit of doubt as he was neither identified by both the witnesses nor any case

property was recovered at his instance. Further, the trial court also noted that his father's name also did not match with the name mentioned in the charge sheet. There was no recovery effected from his possession or at his instance. So far as accused *Manesh @ Monu* was concerned, the trial court granted benefit of doubt by holding that his identity was not strongly established. To reach such a conclusion, it was noted that both *Rakesh Singhal* and *Ankit Singhal* in their testimony had stated that at the time of incident, the accused *Manesh @ Monu* had remained outside and never entered the shop. Both the witnesses admitted during their cross-examination that because of the lights inside the shop there was a glare and dazzling effect outside the shop. Further, *Ankit Singhal* during his cross-examination admitted that when he came to the Court for the first time for his testimony, he was shown the accused outside the Court by a police official, who had also asked him to identify the accused in Court. The accused jewelers namely *Bijender, Ramesh Chand, Jitesh Verma, Devender Kumar and Vinod Jain*, to whom the robbed jewelry was allegedly sold, were also extended the benefit of doubt and acquitted as their names were not mentioned in the disclosure statements of the appellant and *Manesh @ Monu*.

42. Learned Counsel next contended that since recovery of robbed jewelry articles was disbelieved, it should endure to the benefit of the appellant. It is pertinent to note that the entire recovery of the robbed jewelry articles was disbelieved on account of the fact that the complaint, *Rakesh Singhal* in his complaint had stated that the robbed jewelry had a peculiar identification mark/label on them i.e., the 'face of lady' but they did not mention about such mark/label at the time of in-Court identification of the case property. It was also observed by the trial court

that the I.O. had not explained as to from where the I.O. had obtained the jewelry articles which were mixed with the recovered robbed jewelry articles at the time of TIP of the case property. The recovery at the instance of the accused persons was also disbelieved on the ground that the robbed jewelry articles came to be recovered on account of second disclosure statement and that no public witness was joined in the recovery proceedings. Similarly, for the abovementioned reasons, the recovery from the accused jewelers namely, *Bijender, Ramesh Chand, Jitesh Verma, Devender Kumar and Vinod Jain* was also disbelieved.

From above, it is pertinent that the co-accused were not acquitted only for the reason that the recovery of robbed jewelry articles at their instance was disbelieved but for the reason that their identity could not be proved beyond doubt.

43. So far as contention regarding sketches being made but not produced during the trial is concerned, it is seen that no question or suggestion was given to any of the witnesses on this aspect, especially to *SI Jagdish Chander (PW-9)*.

44. In the opinion of this Court, the testimonies of the two eye witnesses and their in-Court unambiguous and positive identification of the appellant as the person who was present inside the shop and took part in commission of the robbery on the date of the incident are consistent, reliable and admissible. There is not even an iota of doubt so far as the presence, role & identification of the appellant in the incident that took place inside the shop of the complainant. The witnesses had no motive to falsely implicate the appellant who was a complete stranger to them.

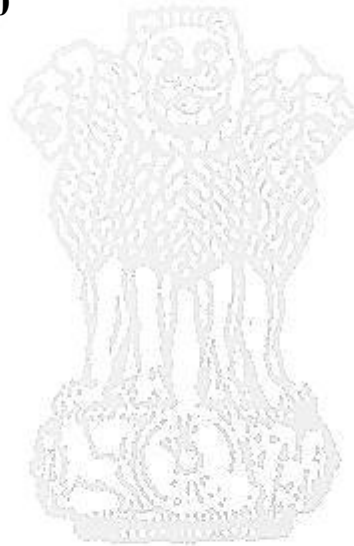
45. Accordingly, this Court finds no ground to interfere with the findings and judgment of the trial court. The appeal is accordingly dismissed.

46. A certified copy of this order be communicated to the appellant through the concerned Jail Superintendent as well as to the concerned trial court.

(MANOJ KUMAR OHRI)
JUDGE

SEPTEMBER 17th, 2020

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नस्यमेव जयते